



California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT-OF-INTEREST CODES

AMENDMENT

STATE AGENCY:	STATE COMPENSATION INSURANCE FUND UNIVERSITY OF CALIFORNIA STATE BOARD OF EQUALIZATION
MULTI-COUNTY:	CONSOLIDATED IRRIGATION DISTRICT NORTH COUNTY JOINT UNION SCHOOL DISTRICT

A written comment period has been established commencing on **January 23, 2009**, and closing on **March 9, 2009**. Written comments should be directed to the Fair Political Practices Commission, Attention Ivy Branaman, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **March 9, 2009**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Ivy Branaman, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Ivy Branaman, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended subsection 3434(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Light Brown Apple Moth Interior Quarantine as an emergency action that was effective on September 5, 2008. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later March 23, 2009.

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended subsection 3434(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Light Brown Apple Moth Interior Quarantine as an emergency action that was effective on September 10, 2008. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than March 23, 2009.

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended subsection 3434(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Light Brown Apple Moth Interior Quarantine as an emergency action that was effective on October 14, 2008. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than March 23, 2009.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or follow-

ing the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before March 9, 2009.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication (Food and Agricultural Code Section 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts and the methods to be used to eradicate said pest (Food and Agricultural Code Section 5761).

The amendments of 3434(b) established additional portions of Alameda, Contra Costa, Marin, Monterey, Napa, San Benito, San Mateo, Santa Clara, Santa Cruz and Solano counties as regulated areas. There is no existing, comparable federal regulation or statute regulating the intrastate movement.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Section 3434 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce Section 3434. No reimbursement is required for Section 3434 under Section 17561 of the Government Code because all of the affected county agricultural commissioners requested the change in the regulation.

The Department also has determined that the amended regulation will involve no additional costs or savings to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings

to local agencies or school districts, and no costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed actions will not affect housing costs.

EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed actions will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON AFFECTED PRIVATE PERSON OR BUSINESSES

The cost impact of the amended regulation on a representative private person or business located within the regulated area may be significant. An average infested ornamental nursery producing plants in one-gallon containers may incur initial costs of \$140 to \$218 per acre in eliminating the light brown apple moth to be in reasonable compliance with the proposed action. Approximately 65,000 one-gallon containers may be placed upon one acre. This translates into an initial increased production cost of \$0.002 to \$0.003 per one gallon container. The actual costs may vary with the type of material used, size and production practices of the affected businesses.

However, nursery stock that is infested with the light brown apple moth does not meet the current requirements of Section 3060.2, Standards of Cleanliness, California Code of Regulations (CCR), and cannot be sold. Therefore, there are no additional mandated costs of compliance due to this regulation.

ASSESSMENT

The Department has made an assessment that the proposed adoption of the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and

brought to the attention of the Department would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

AUTHORITY

The Department proposes to amend Section 3434 pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The proposed amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Liz Johnson at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet Web site (www.cdfa.ca.gov/cdfa.pendingregs).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The loca-

tion of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

TITLE 18. STATE BOARD OF EQUALIZATION

NOTICE IS HEREBY GIVEN

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes to amend Regulation 1502, Computers, Programs, and Data Processing, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulations will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on March 16, 2009. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by March 16, 2009.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current law, Revenue and Taxation Code section 6010.9, provides that “sale” and “purchase,” for sales and use tax purposes, generally do not include the design, development, writing, translation, fabrication, lease, or transfer, for a consideration, of title or possession of a custom computer program. The statute includes definitional sections.

Regulation 1502, Computers, Programs, and Data Processing, is proposed to be amended to interpret, implement, and make specific Revenue and Taxation Code section 6010.9. Amendments are proposed to clarify the statutory definition of “computer program.” Specifically, the amendments are necessary to clarify that: (1) the definition of “computer program” includes subdivisions such as routines and similar programming building blocks, as described in Revenue and Taxation Code section 6010.9, subdivision (c); and (2) the defini-

tion of “computer program” contained in subdivision (c) is consistent and in harmony with the definitional and related explanatory provisions pertaining to “customer computer programs” and “existing prewritten programs” set forth in subdivision (d).

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed amendments and regulations do not impose a mandate on local agencies or school districts. Further, the Board has determined that the amendments and regulations will result in no direct or indirect cost or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization made an initial determination that the adoption of the amendments to Regulation 1502 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed amendment to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The amendment to the regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulations may affect small business.

COST IMPACT ON PRIVATE PERSON OR BUSINESSES

That Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Regulation 1502 and the proposed changes have no comparable federal regulations.

AUTHORITY

Section 7051, Revenue and Taxation Code.

REFERENCE

Section 6010.9, Revenue and Taxation Code.

CONTACT

Questions regarding the substance of the proposed regulation should be directed to Ms. Lisa Andrews (916) 322-5989, at 450 N Street, Sacramento, CA 95814, e-mail Lisa.Andrews@boe.ca.gov or MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail at State Board of Equalization, Attn: Rick Bennion MIC:81, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT
OF REASONS AND TEXT OF
PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

AVAILABILITY OF FINAL STATEMENT
OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Mr. Bennion. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

**TITLE 25. DEPARTMENT OF
HOUSING AND COMMUNITY
DEVELOPMENT**

MEMORANDUM

DATE: January 23, 2009
TO: Interested Parties
FROM: Cathy E. Creswell, Deputy Director
Division of Housing Policy Development
SUBJECT: **Annual Progress Reports — Notice of
Comment Period**

**NOTICE OF PROPOSED RULEMAKING
FOR THE ADOPTION OF HOUSING
ELEMENT ANNUAL PROGRESS
REPORT REGULATIONS**

Notice is hereby given that the Department of Housing and Community Development (Department) proposes to adopt regulations governing the State Housing Element Annual Progress Report. These regulations implement and interpret subdivision (b) of Government

Code Section 65400 which establishes the requirement that each city, county or city and county planning agency prepare an annual report on the status of the housing element of its general plan and progress in its implementation using forms and definitions adopted by the Department.

This notice is the third formal request for public comment on the proposed regulations governing the State Housing Element Annual Progress Report. The Department began the process of soliciting informal comment in July, 2005 through mailing and subsequent public meetings. Based on received comments, the regulations were developed and, in accordance to the formal Administrative Procedure Act, circulated for two 45-day comment periods in 2006 and 2007. The formal rule-making process was not able to be completed within the statutorily-required one-year notice period. As a result, the Department must provide a new notice and new 45-day public comment period. Please note, the current proposed regulations, do not materially differ from the regulations previously proposed for adoption in 2007 which had been revised to reflect comments from the previous two comment periods.

COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit comments relevant to the proposed regulatory action to the Department. The comment period begins on January 23, 2009 and closes on March 9, 2009 at 5:00 p.m. The Department will consider comments received during this timeframe. The regulations are available at www.hcd.ca.gov. Your comments may be submitted by mail, fax, or e-mail to:

Melinda Coy
Department of Housing and Community Development – HPD
1800 3rd Street, Suite 430
Sacramento, CA, 95814
Phone: (916) 445-4728
Fax: (916) 327-2643
e-mail: mcoy@hcd.ca.gov

PUBLIC HEARING

A public hearing will be held on:

March 9, 2009 – Sacramento – 10:00am–2:00pm
Department of Housing and Community Development
1800 Third Street, Room 170, Sacramento
General Contact: (916) 445-4728 (site information only)

Any person may present statements or testimony orally or in writing relevant to the proposed action described in the Informative Digest below. The Department requests, but does not require, persons making oral comments at the hearing also submit a written copy.

AUTHORITY AND REFERENCE

The Department is conducting this rulemaking activity under the authority provided by Government Code Section 65400 and Health & Safety Code Section 50439. They implement and make specific subdivision (b)(2) of Government Code Section 65400.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The purpose of these proposed regulations is to comply with the statutory mandate of subdivision (b) of Government Code Section 65400 to provide forms and definitions to be used by local governments in the preparation of Annual Progress Reports detailing implementation progress of their housing element. In addition, the proposed regulations provide direction on the contents of the report, consistency and clarity on reporting requirements.

Section 6200. Purpose and Scope. This section provides the authority, purpose of the regulation, and the general activities they regulate.

Section 6201. General. This section establishes the beginning and ending date of the reporting period and identifies three approaches an agency can take to utilize the proposed annual form. In addition, only those activities conducted within the jurisdictional boundaries of the reporting locality will be included in the annual report form.

Section 6202. Definitions. This section provides the definitions of key terms used throughout the body of the regulations.

Section 6203. Annual Report Content. The purpose of this section is to implement and interpret reporting requirements. Each year the local government agency will provide an annual report to the localities legislative body, the Governor's Office of Planning and Research and this Department.

IMPACT OF PROPOSED REGULATIONS

The purpose of the Housing Element Annual Progress Report is for local government agencies to report implementation progress of the housing element of their general plan as required by Government Code Section 65400.

EFFECT ON SMALL BUSINESS

The proposed regulations do not affect small businesses, because they do not mandate or require small businesses to take any prescribed action, and have no financial impact on small businesses.

LOCAL MANDATE

The proposed regulatory activity will not impose a mandate on local agencies or school districts.

FISCAL IMPACT

This regulatory activity does not impose any cost on local government agencies or school districts that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code; nor does the regulatory activity result in any other nondiscretionary cost or savings imposed on local government agencies, or State agencies. There are no costs or savings in Federal funding to the State.

EFFECT ON HOUSING COSTS

The focus of the Housing Element Annual Progress Report regulation is to provide direction on the contents of the report, consistency and clarity on reporting requirements. There will not be any impact on housing costs.

INITIAL DETERMINATION OF STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT STATEMENT

The Department has determined that the regulations will not significantly affect the creation or elimination of jobs in California; the creation of new businesses or the elimination of existing businesses within California; or the expansion of businesses currently operating in California.

STATEMENT OF POTENTIAL COSTS IMPACT ON PRIVATE PERSONS AND BUSINESS DIRECTLY AFFECTED

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective, and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF TEXT OF PROPOSED REGULATIONS AND STATEMENT OF REASONS

The text of the proposed regulations is available upon request, along with the Initial Statement of Reasons, prepared by the Department. All information the Department is considering as a basis for this proposal is maintained in a rulemaking file, which is available for inspection at the address noted below. Copies can be obtained by contacting Melinda Coy at the address and telephone number indicated (see next page). The regulations are also available on the Department's web site at <http://www.hcd.ca.gov/regulations/>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the comment period, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications, which are related to the originally proposed text, it will make the text, with changes clearly indicated, available to the public for at least 15 days prior to adoption of the revised regulations. Requests for copies of the modified regulations can be sent to Melinda Coy at the address indicated below. The Department will accept comments for 15 days after the release date of the modified regulations.

AVAILABILITY OF RULEMAKING DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting Melinda Coy or Lenora Frazier.

**AVAILABILITY OF FINAL STATEMENT
OF REASONS**

At the conclusion of this rulemaking, a Final Statement of Reasons will be prepared as required by Government Code section 11346.9. This document will be available from the contact person(s) named below.

CONTACT INFORMATION

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the comment period. Direct inquiries concerning the substance of the proposed rulemaking action and any requests for the documents should be made to:

HCD: Melinda Coy
(916) 445-5307

Back Up: Lenora Frazier
(916) 323-7288

Address: Department of Housing and
Community Development
Division of Housing Policy
Development
1800 Third Street, Room 430
Sacramento, Ca 95814

E-mail: mcoy@hcd.ca.gov — for direct inquiries or for copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations access the Department's website at www.hcd.ca.gov.

Fax No: (916) 327-2643

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —
Public Interest Notice
For Publication January 23, 2009
PROPOSED RESEARCH ON FULLY
PROTECTED SPECIES
Monitoring California Least Tern Nesting Colonies

The Department of Fish and Game ("Department") received a proposal on December 4, 2008, from Ms. Bonnie Peterson, with Merkel and Associates, Inc.,

5434 Ruffin Road, San Diego, CA 92123, requesting authorization to take California Least Terns (*Sternula antillarum browni*), Fully Protected Birds, for research purposes, consistent with the protection and recovery of these species.

The applicant has the required Scientific Collecting Permit (SCP) to take protected species of wildlife. Permit conditions require that the holder of an SCP obtain special authorization from DFG for research on Fully Protected species. The proposed activities include approaching Least Tern nesting areas to gather necessary data used in monitoring nesting status and identifying threats from humans and predators. Data would be collected by observation; handling and banding live Least Tern adults, chicks, eggs, or nest sites will also be authorized. DFG intends to issue, under specified conditions, a Memorandum of Understanding (MOU) that would authorize the applicant to carry out the proposed activities. As these birds are also federally-listed endangered species, the applicant possesses a valid Federal Threatened and Endangered Species permit (TE 797999-18).

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected Birds after 30 days notice has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected Birds, it would issue the authorization on or after February 23, 2009, for a term of three years. Contact: Wildlife Branch, 1812 Ninth Street, Sacramento, CA 95811, Attn.: Dale Steele.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —
Public Interest Notice
For Publication January 23, 2009
PROPOSED RESEARCH ON FULLY
PROTECTED SPECIES
Monitoring Light-footed Clapper Rails in California

The Department of Fish and Game ("Department") received a proposal on December 4, 2008, from Ms. Bonnie Peterson, with Merkel and Associates, Inc., 5434 Ruffin Road, San Diego, CA 92123, requesting authorization to take Light-footed Clapper Rails (*Rallus longirostris levipes*), a Fully Protected Bird, for research purposes, consistent with the protection and recovery of these species.

The applicant has the required Scientific Collecting Permit (SCP) to take protected species of wildlife. Permit conditions require that the holder of an SCP obtain special authorization from DFG for research on Fully

Protected species. Light-footed Clapper Rails will be approached in their nesting habitats but will not be handled. Tape-playback of Light-footed Clapper Rails will be used. DFG intends to issue, under specified conditions, a Memorandum of Understanding (MOU) that would authorize the applicant to carry out the proposed activities. As these birds are also federally-listed endangered species, the applicant possesses a valid Federal Threatened and Endangered Species permit (TE 797999-18).

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected Birds after 30 days notice has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected Birds, it would issue the authorization on or after February 23, 2009, for a term of three years. Contact: Wildlife Branch, 1812 Ninth Street, Sacramento, CA 95811, Attn.: Dale Steele.

PROPOSITION 65

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (Proposition 65)

Metam Potassium Under Consideration For Possible Listing Via The Authoritative Bodies Mechanism: Request For Relevant Information EXTENSION OF PUBLIC COMMENT PERIOD January 23, 2009

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65 or the Act), which is codified as Health and Safety Code section 25249.5 et seq., requires the Governor to publish, and update at least annually, a list of chemicals known to the State to cause cancer or reproductive toxicity. The Act describes the mechanisms for administratively listing chemicals as

known to the State to cause cancer or reproductive toxicity (Health and Safety Code section 25249.8).

On December 5, 2008, OEHHA published a notice in the *California Regulatory Notice Register* (Register 08 No. 49-Z) soliciting information which may be relevant to the evaluation of *metam potassium* under consideration for possible listing within the context of the Proposition 65 administrative listing regulatory criteria in Title 27 of the California Code of Regulations section 25306 (formerly Title 22 of the California Code of Regulations section 12306.) [Carbaryl, metofluthrin, and spirodiclofen were also included in the December 5 request for relevant information notice.]

The publication of the notice initiated a 60-day public comment period which would have closed on February 3, 2009. OEHHA has received a request from an interested party seeking an extension of the comment period to allow for the submission of complete and relevant scientific information for *metam potassium*. OEHHA hereby extends the public comment period for *metam potassium* for 45 days to 5 p.m., **Friday, March 20, 2009**. [NOTE: The comment period will close for carbaryl, metofluthrin, and spirodiclofen on Tuesday, February 3, 2009.]

Written comments on *metam potassium*, along with supporting information, may be submitted to:

Ms. Cynthia Oshita
Office of Environmental Health Hazard Assessment
Street Address: 1001 I Street
Sacramento, California 95814
Mailing Address: P.O. Box 4010
Sacramento, California 95812-4010
Fax No.: (916) 323-8803
Telephone: (916) 445-6900
E-mail to: coshita@oehha.ca.gov

Comments may also be delivered in person or by courier to the above address. It is requested that hard-copy comments be submitted in triplicate. In order to be considered, comments must be received at OEHHA by 5 p.m., Friday, March 20, 2009.

RULEMAKING PETITION DECISION

DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE OF DECISION ON PETITION FOR RULEMAKING (Government Code Section 11340.7)

By letter dated August 21, 2008, Chris Tan, GMSX LLC dba Gelateria Naia (Petitioner) petitioned the De-

partment of Food and Agriculture (Department) of the State of California to add new regulation under Title 3 of the California Code of Regulations. The proposed new regulation would establish a temporary standard for labeling and analytical methods for “gelato” as a milk food product pursuant to section 36631 et seq., of the Food and Agricultural Code.

PROVISIONS OF THE CODE OF REGULATIONS REQUESTED TO BE AFFECTED

Title 3, California Code of Regulations, Chapter 1,
Division 2, Article 5.

AUTHORITY AND REFERENCE CITED IN THE PETITION

Section 36631 et seq., Food and Agricultural Code.

DEPARTMENT DECISION

On September 12, 2008, the Department responded to the Petitioner accepting the petition for consideration. On January 5, 2009, the Department issued its final decision denying the petition in full for the reasons set forth below.

REASONS SUPPORTING THE DEPARTMENT’S DETERMINATION

The petition was considered and noticed for public comment according to the hearing procedures specified in Food and Agricultural Code section 36634.

The Department issued its final decision to the Petitioner specifying its findings as follows:

January 5, 2009

Chris Tan
GMSXLLC dba Gelateria Naia
736 Alfred Nobel Drive
Hercules, CA 94547

Dear Mr. Tan,

The Department has completed its evaluation of your petition for a temporary standard for gelato dated August 21, 2008. Pursuant to Food and Agricultural Code Section 36633, the temporary standard request was evaluated on the basis of all of the following:

(1) Testimony submitted by all interested persons during the hearing conducted October 17, 2008 through December 15, 2008.

(2) The health and safety conditions under which the proposed product will be processed and distributed.

(3) Existing definitions and standards established for comparable products.

Testimony submitted by interested persons was in large majority (80%) against the petition. Opposition included individual manufacturers as well as trade associations representing large sectors of the frozen dessert industry both within California and nationally. A common objection was that the proposed standard is too restrictive, resembling a single product formulation rather than an inclusive standard of identity, and would result in exclusion of a large number of products currently marketed as gelato. Testimony suggested this would lead to hindered product innovation, economic hardship for many current manufacturers, and significant disruption of commerce. Collectively, testimony also did not indicate that significant consumer confusion exists concerning frozen products labeled as “gelato”.

There was strong industry objection to the petition’s proposed restriction on safe and suitable synthetic ingredients approved for use in foods, and the resulting mandatory use of an all-natural product formulation. The Department concurs that such a restriction is not science based and would be inappropriate for an industry-wide standard of identity. The voluntary use of “natural” or “all natural” product claims are more properly regulated as truth-in-labeling and consumer choice issues, and are adequately addressed by Title 21, Part 101 of the Code of Federal Regulations, and Section 32914 of the California Food and Agricultural Code.

The health and safety conditions under which the proposed product would be processed and distributed would not differ from those required of existing milk products or frozen desserts already regulated by the Department. Thus, a separate standard of identity is not needed to ensure consumer safety or the protection of public health.

Regarding existing standards for comparable products, the Department finds the proposed temporary standard does not significantly differ from ice cream, frozen dairy dessert or frozen dessert as defined in the Food and Agricultural Code, or from ice cream, frozen custard or mellorine as defined in Title 21, Part 135 of the Code of Federal Regulations, to qualify it as a “new dairy product” or to warrant a separate standard of identity.

Section 32912 of the Food and Agricultural Code also allows any milk product or “frozen dessert that is subject to a standard of identity to be specially formulated or processed to lower the content of its milk fat, alter its milk fat composition, or otherwise modify its nutrient profile,” provided such products are labeled in ac-

cordance with applicable provisions of Title 21 of the Code of Federal Regulations.

Therefore, after careful consideration according to the criteria listed above, the Department pursuant to Sections 36633 and 36634 of the Food and Agricultural Code denies your petition for a temporary standard.

Should you have any questions please do not hesitate to contact us.

Sincerely,

Dr. Stephen Beam, Chief
Milk and Dairy Food Safety Branch

cc: Dr. Annette Whiteford, Director, AHFSS

**ACCEPTANCE OF PETITION
TO REVIEW ALLEGED
UNDERGROUND REGULATIONS**

OFFICE OF ADMINISTRATIVE LAW

**ACCEPTANCE OF PETITION TO REVIEW
ALLEGED UNDERGROUND REGULATIONS**

**(Pursuant to title 1, section 270, of the
California Code of Regulations)**

DEPARTMENT OF MENTAL HEALTH

Agency being challenged:

The Office of Administrative Law has accepted the following petition for consideration. Please send your comments to:

Kathleen Eddy, Senior Counsel
Office of Administrative Law
300 Capitol Mall, Ste. 1250
Sacramento, CA 95814

A copy of your comment must also be sent to the petitioner and the agency contact person.

Petitioner:

Michael St. Martin
CO-000414-3, RRU-7
P.O. BOX 5003
Coalinga, CA 93210

Agency contact:

Hon Chan, Senior Staff Counsel
Dept. of Mental Health
1600 9th Street, Ste. 151
Sacramento, CA 95814

Please note the following timelines:

Publication of Petition in Notice Register: January 23, 2009

Deadline for Public Comments: February 23, 2009

Deadline for Agency Response: March 9, 2009

Deadline for Petitioner Rebuttal: No later than 15 days after receipt of the agency's response

Deadline for OAL Decision: May 26, 2009

The attachments are not being printed for practical reasons or space considerations. However, if you would like to view the attachments please contact Margaret Molina at (916) 324-6044 or mmolina@oal.ca.gov.

**PETITION TO THE OFFICE OF
ADMINISTRATIVE LAW**

RE: **ALLEGED UNDERGROUND
REGULATION**

Department of Mental Health

*Special Order No.: 130.01, "The By Choice
Incentive System"*

FROM: MICHAEL GEORGE ST. MARTIN, Petitioner

DATE: December 15, 2008

This is a computer generated petition based on the optional OAL form supplying the information required by Title 1, California Code of Regulations, §280, for a petition challenging an alleged underground regulation.

1. Identifying Information: Petitioner

Your Name: **MICHAEL GEORGE ST.
MARTIN**

CO-000414-3, RRU-10

Your Address: **P.O. Box 5003, Coalinga,
CA 93210**

Your Telephone Number: **(559) 935-0493 or (559)
935-0638**

Your E-Mail (if you have one): **michaelst.martin@
hotmail.com**

2. State Agency or Department being challenged:

**California Department of Mental Health
("DMH")**

3. Provide a complete description of the purported underground regulation. Attach a written copy of it. If the purported underground regulation is found in an agency manual, identify the specific provision of the manual alleged to comprise the underground regulation. Please be as precise as possible.

Description of alleged Underground Regulation

Petitioner alleges the ENTIRE California Department of Mental Health ("DMH") Operation Manual is an Underground Regulation, as there is no evidence that any portion of the DMH Operation Manual has been promulgated pursuant to the Administrative Procedures Act.

By this action, Petitioner specifically alleges the section of the DMH Operation Manual known as *Special Order No.: 130.01, "The By Choice Incentive System"* is an underground regulation, as there is no evidence that this Special Order has been promulgated pursuant to the Administrative Procedures Act.

Department of Mental Health Special Orders are written Orders which are issued by the Deputy Director, Long Term Care Services, Department of Mental Health. Special Orders are mandatory and direct each State Hospital within the Department of Mental Health system to take specific actions. Because these mandated specific actions are required of all State Hospitals, they affect all persons in California detained at State Hospitals operated by the Department of Mental Health.

Special Order No.: 130.01, "The By Choice Incentive System" states:

"Each State Hospital shall incorporate this policy into their 'By Choice' Administrative Directive without interpretation."

"The state hospital administrative directives shall contain the definitions and procedures that are used within this Special Order."

Thus, *Special Order No.: 130.01* requires the development of Administrative Directives with specific language and mandates, procedures, and definitions by each State Hospital.

A true and correct copy of
Special Order No.: 130.01, "The By Choice Incentive System"
is attached hereto as EXHIBIT A.

4. **Provide a description of the agency actions you believe demonstrate that it has issued, used, enforced, or attempted to enforce the purported underground regulation.**

Special Order No.: 130.01, "The By Choice Incentive System" is applied to all persons, no matter what their classification who are detained at each State Hospital in California by the Department of Mental Health. Its existence and use are not in controversy.

As a result of *Special Order No.: 130.01, "The By Choice Incentive System"*, each State Hospital has a By Choice Administrative Directive, along with various related procedures and definitions.

Special Order No.: 130.01, "The By Choice Incentive System" states, "The BY CHOICE incentive system is an element of the individual's Wellness and Recovery Plan (WRP). . ."

It should be noted that other elements of the **WRP**, the *Wellness and Recovery Model Plan Manual*, and *Administrative Directive 446 (AD-446)*, *Wellness and Recovery Planning Team (WRPT)*, are each presently the subject of a two different Petitions to the OAL which alleges that each of them are underground regulations that have not been promulgated pursuant to the Administrative Procedures Act.

Petitioner alleges that the DMH can not justify or legitimize the use of one *Special Order* or *Administrative Directive* which has not been legally promulgated pursuant to the Administrative Procedures Act by citing as its authority some other Rule, Regulation, Manual, Instructions, Administrative Directive, or Special Order, which itself is also an underground regulation which has not been legally promulgated pursuant to the Administrative Procedures Act.

The DMH has taken the firm position that none of its Manuals, Instructions, Administrative Directives, or Special Orders are regulations subject to the provisions of the APA.

Petitioner alleges that *Special Order No.: 130.01, "The By Choice Incentive System"* is a regulation within the meaning of the APA.

5. **State the legal basis for believing that the guideline, criterion, bulletin, provision in a manual, instruction, order, standard of general application, or other rule or procedure is a regulation as defined in Section 11342.600 of the Government Code that no express statutory exemption to the requirements of the APA is applicable.**

SPECIAL ORDER NO.: 130.01, "THE BY CHOICE INCENTIVE SYSTEM" IS A REGULATION WITHIN THE MEANING OF THE APA

Prior to implementation, or revision thereof, the Department was required to adopt *Special Order No.: 130.01, "The By Choice Incentive System"*, or any revision thereof, but failed to do so, and thus, pursuant to the law the current version now being utilized is invalid and an "Underground Regulation."

Though the Director may prescribe rules and regulations such as *Special Order No.: 130.01*, they must be promulgated and filed per Chapter 3.5 of art. 1 of Division 3 of Title 2 of the Administrative Procedures Act, government Code, section 11340 et seq. There is no evidence that DMH has ever promulgated any version of *Special Order No.: 130.01*.

Special Order No.: 130.01, “The By Choice Incentive System” is a regulation. Chapter 3.5, article 5, of the Administrative Procedure Act, Govt. Code sections 11346 et seq., governs adoption, amendment and repeal of regulations by administrative agencies known as rulemaking. Govt. Code section 11342.600 provides that:

“[A regulation is] every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret or make specific the law enforced or administered by it or to govern its procedure.”

Syngenta Crop Protection, Inc. v. Helliker (2d Dist. 2006) 138 Cal.App. 4th 1135, 1175–77, 42 Cal.Rptr.3d 191, 221–222, quotes *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal. 4th 557, 59 Cal.Rptr.2d 186, which explains:

“[The APA] establishes ‘minimum procedural requirements’ for rulemaking. ([Govt. C.] § 11346(a).) The agency must provide notice of the proposed action (*Id.* §§ 11346.4, 11346.5), the complete text of the proposal (§ 11346.2(a)), and an initial statement of reasons for the proposal (§ 11346.2(b)), and a final statement of reasons (§ 11346.9(a)). The agency must provide a public hearing if an interested person timely requests a hearing (§ 11346.8(a)), provide an opportunity for interested persons to submit written comments if no hearing is held (*ibid.*), and respond in writing to comments in the final statement of reasons (§ 11346.9(a)(3)). The agency must submit the entire rulemaking file to the Office of Administrative Law (§§ 11347.3(c), 11342.550), which reviews the regulation for compliance with the law and other criteria and approves or disapproves the regulatory action. (§§ 11349.1, 11349.3 . . .) (14 Cal. 4th 557, 59 Cal.Rptr.2d 186.)

“No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.” (Govt. Code § 11340.5(a).)

“A substantial failure to comply with chapter 3.5 of the APA renders the regulation invalid. § 11350(a); *Tidewater Marine Western, Inc. v. Bradshaw*, *supra*, 14 Cal. 4th at 576, 59 Cal.Rptr.2d 186.)”

“A regulation subject to the APA thus has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided . . . Second, the rule must ‘implement, interpret, or make specific, the law enforced or administered by [the agency], or . . . govern [the agency’s] procedure.’ ([Former] Govt. Code § 11342(g) [now § 11342.601].) Of course, interpretations that arise in the course of case-specific adjudication are not regulations, though they may be persuasive as precedents in similar subsequent cases . . . Similarly, agencies may provide private parties with advice letters, which are not subject to the rulemaking provisions of the APA. ([Former] Govt. Code § 11343(a)(3), 11346.1(a) [now § 11340.9(I)].) Thus, if an agency prepares a policy manual that is no more than a summary, without commentary, of the agency’s prior decisions in specific cases and its prior advice letters, the agency is not adopting regulations . . . A policy manual of this kind would of course be no more binding on the agency in subsequent agency proceedings or on the courts when reviewing agency proceedings than are the decisions and advice letters that it summarizes.” (Emphasis added.) (*Tidewater Marine Western, Inc. v. Bradshaw*, *supra*, 14 Cal. 4th at 571, 59 Cal.Rptr.2d 186.)”

Morning Star Co. v. State Bd. Of Equalization (2006), 38 Cal. 4th 324, 333–334, 42 Cal.Rptr.3d 47, 53–54, confirms the Syngenta/Tidewater analysis, especially that a regulation must be intended to apply generally, and that it must implement, interpret or make specific the law administered by the agency, or govern the agency’s procedure.

Special Order No.: 130.01, “The By Choice Incentive System” is a regulation. It is applied to all persons proposed or adjudicated to mentally ill or have a mental abnormality in California who are detained by Department of Mental Health. Its use is mandatory. Thus the mandate of **Special Order No.: 130.01** implements, enforces or otherwise makes specific various provisions of the Welfare and Institutions Code, and the Penal Code.

**NO EXCEPTION EXCLUDES SPECIAL
ORDER NO.: 130.01
FROM THE APA PROCEDURES.**

Clearly inapplicable are the provisions of Govt. Code § 11340.9 excluding:

“(d) A regulation that relates only to the internal management of the state agency. . . .”

“(f) A regulation that embodies the only legally tenable interpretation of a provision of law. . . .”

“(I) A regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.”

Armistead v. State Personnel Bd. (1978) 22 Cal.3d 198, 204–205, 149 Cal.Rptr. 1, 4 quoting from the First Report of the Senate Interim Committee on Administrative Regulations to the 1955 Legislature, documents the necessity for strict adherence to the APA. The court found this necessary so as to prevent state agencies from avoiding obedience to the APA by denominating rules as “ ‘policies,’ ‘interpretations,’ ‘instructions,’ ‘guides,’ ‘standards,’ or the like,” and by containing them “in internal organs of the agency such as manuals, memoranda, bulletins, or [directing them] to the public in the form of circulars or bulletins.”

Armistead underlined that “[R]ules that interpret and implement other rules have no legal effect unless they have been promulgated in substantial compliance with the APA” (emphasis added), thus provision of state personnel transactions manual governing withdrawal of resignation by state employee merited no weight as agency interpretation where such provision had not been duly promulgated and published.

Special Order No.: 130.01 is mandatory. The definitions set forth therein are concrete in nature, and are set forth with words such as “is,” “are,” “shall,” and “will,” leaving no room for discretion, and leaving no doubt that this is the way it is.

The Special Order in question here fits the *Armistead* description perfectly. It is referred to as “Special Order,” and is replete with mandatory words such as “shall” and “will” in regard to actions to be taken. It contains mandatory language thus making it much more than simple policies, interpretations, instructions, guides, standards, or the like. Instead, it is a forbidden underground regulation which has not been adopted pursuant to the Administrative Procedures Act.

The authority for issuing **Special Order No.: 130.01, “The By Choice Incentive System”** is stated in that document as, “By order of the Deputy Director, Long Term Care Services.”

Petitioner alleges that no authority exists in statutory law, or in the Constitutions of California or the United States, which would grant the Deputy Director, Long Term Care Services, of the Department of Mental Health the autocratic authority to issue, utilize, enforce, or attempt to enforce any rule or regulation by denominating it a **Special Order**, unless it has first been pro-

mulgated pursuant to the Administrative Procedures Act.

Special Orders apply statewide to all DMH facilities. These **Special Orders** mandate what each facility must mandate in its own version of an **Administrative Directive**. Having each DMH facility issue its own mandated version of a **Special Order** under the label of an **Administrative Directive** is just the sort of “avoiding obedience to the APA” that is discussed in *Armistead v. State Personnel Bd.*

**SPECIAL ORDER NO.: 130.01
APPLIES GENERALLY
TO ALL PERSONS DETAINED BY THE
DEPARTMENT OF MENTAL HEALTH**

Modesto City Schools v. Education Audits Appeal Panel, (3d Dist. 2004) 123 Cal.App. 4th 1365, 1381, 20 Cal.Rptr.3d 831, 842, holds that to be deemed an underground regulation, which would be invalid because it was not adopted in substantial compliance with the procedures of the APA, the agency must intend it to apply generally rather than in a specific case, and the agency must adopt it to implement, interpret, or make specific the law enforced by the agency.

“The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. . . . (*Tidewater Marine Western, Inc. v. Bradshaw*, *supra*, 14 Cal. 4th at 571, 59 Cal.Rptr.2d 186.)” (*Morning Star Co. V. State Bd. Of Equalization* (2006), 38 Cal. 4th 324, 333, 42 Cal.Rptr.3d 47, 55).

Kings Rehabilitation Center, Inc. V. Premo, (3rd Dist. 1999) 69 Cal.App. 4th 215, 217, 81 Cal.Rptr.2d 406, notes:

“The APA is partly designed to eliminate the use of ‘underground’ regulations; rules which only the government knows about. If a policy or procedure falls within the definition of a regulation within the meaning of the APA, the promulgating agency must comply with the procedures for formalizing such regulations, which include public notice and approval by the Office of Administrative Law (OAL). Failure to comply with the APA nullifies the rule. (Govt. Code § 11350(a); *Armistead v. State Personnel Bd.* (1978) 22 Cal.3d 198, 204, 149 Cal.Rptr. 1, 4”) (Emphasis added.)

Special Order No.: 130.01 is neither intended nor utilized to make specific determinations but is utilized generally when determining numerous rights of, and treatment received by, all persons detained by the Department of Mental Health. Thus, **Special Order No.: 130.01** is a regulation that must be promulgated as a reg-

ulation but otherwise is a null and void underground regulation.

6. Provide information demonstrating that the petition raises an issue of considerable public importance requiring prompt resolution.

Special Order No.: 130.01 is at odds with the due process rights, conveyed by the California and United States Constitutions, to all persons detained by the DMH because it mandates actions that affect their liberty and property interests but has never been legally promulgated.

The state authorized enforcement by state employees of the numerous statutory and constitutional violations contained in each and every un-promulgated, underground,” Manual, Instructions, Administrative Directive, or Special Order has resulted in a great deal of litigation at great expense to the taxpayers of California. The OAL, pursuant to its regulatory duties, is in a position to bring these underground regulations into the oversight process, and has a duty to the taxpayers to do so.

Public comment and OAL oversight is needed in order to halt the “bureaucratic tyranny” warned of in *Tidewater* and *Morning Star*.

Morningstar reiterates, “[2] These requirements promote the APA’s goals of bureaucratic responsiveness and public engagement in agency rulemaking. ‘One purpose of the APA is to ensure that those persons or entities whom a regulation will affect have a voice in its creation [citation], as well as notice of the law’s requirements so that they can conform their conduct accordingly [citation]. The Legislature wisely perceived that the party subject to regulation is often in the best position, and has the greatest incentive, to inform the agency about possible unintended consequences of a proposed regulation. Moreover, public participation in the regulatory process directs the attention of agency policymakers to the public they serve, thus providing some security against bureaucratic tyranny. [Citation.]’ 1132 P.3d 255] (*Tidewater, supra*, 14 Cal.4th at pp. 568–569, 59 Cal.Rptr.2d 186, 927 P.2d 296.)” (*Morning Star Co. V. State Bd. Of Equalization* (2006), 38 Cal. 4th 324, 333, 42 Cal.Rptr.3d 47, 53.)

7. (Optional) Please attach any additional relevant information that will assist OAL in evaluating your petition.

Notwithstanding numerous requests, grievances, complaints to the DMH, and even petitions submitted to the OAL, the Department of Mental Health has steadfastly refused and failed to follow the law as set forth in the Administrative Procedures Act and promulgate its guidelines, criteria, bulletins, manuals, instructions, orders, standards of general application, or other rules.

This type of obdurate opposition to correcting illegal and unconstitutional content in its Administrative Directives perfectly illustrates why the Legislature established the procedures set forth in the Administrative Procedures Act. This clearly demonstrates the absolute need for oversight and public input to halt the type of bureaucratic tyranny exhibited by the Department of Mental Health by issuing, using, enforcing, or attempting to enforce this type of underground regulation.

CONCLUSION

The Department of Mental Health is not, and has not been, responsive to the public they serve. Nor has the DMH been responsible to the taxpayers who must pay the bills that result from the failure of the DMH to follow the law and serve the public who pays their salaries. The California Supreme Court directed attention to this problem by stating:

“Moreover, public participation in the regulatory process directs the attention of agency policymakers to the public they serve, thus providing some security against bureaucratic tyranny. [Citation.]’ [132 P.3d 255] (*Tidewater, supra*, 14 Cal.4th at pp. 568–569, 59 Cal.Rptr.2d 186, 927 P.2d 296.)” (*Morning Star Co. v. State Bd. Of Equalization* (2006), 38 Cal. 4th 324, 333, 42 Cal.Rptr.3d 47, 53.)

Such bureaucratic tyranny has been a problem throughout the history of this country. Now, it must be stopped once again. The tyrannical bureaucrats in the Department of Mental Health must be directed to follow the law.

The DMH, part of the Executive Branch, lacks Constitutional authority to enact legislation. The Legislature has granted state agencies and departments quasi-legislative powers through the APA providing they follow specific promulgation procedures. However, until and unless the DMH does follow the provisions of the APA to properly promulgate *Special Order No.: 130.01*, it is an underground regulation which has been implemented in violation of the Separation of Powers Clause, Article III, Section 3, of the California Constitution.

To allow the DMH to continue to utilize a controversial Administrative Directive, such as *Special Order No.: 130.01*, would be to allow the sort of unfettered power in the Executive Branch that is a step toward a totalitarian concentration of power in the executive; a power to be exercised with inadequate legislative standard, and capable of avoiding judicial review, particularly when done through sleight-of-hand tactics designed to avoid review, has been prohibited from the earliest times. See *Hayburn’s Case*, (1792) 2 U.S. (Dall.) 408, 1 L.Ed. 436, and its progeny.

Throughout the negotiation and complaint process prior to filing this petition, the Department of Mental Health has consistently cited “safety and security of the institution” as the justification for implementing the rules and regulations that Petitioner alleges are underground rules.

Petitioner takes the position that the justification for using underground rules and regulations is not relevant to the question presented in this Petition. The questions before the OAL are: (1) Is *Special Order No.: 130.01* a regulation within the meaning of the Administrative Procedures Act; and, (2) Did the Department of Mental Health promulgate *Special Order No.: 130.01* pursuant to the Administrative Procedures Act.

Petitioner submits that *Special Order No.: 130.01* is a regulation within the meaning of the Administrative Procedures Act, and that the Department of Mental Health has not promulgated *Special Order No.: 130.01* pursuant to the Administrative Procedures Act, and it is therefore an underground regulation that must be declared null and void.

Based on the foregoing, it is clear that there is a need for public participation in the regulatory process which directs the attention of agency policymakers within the Department of Mental Health to the public they serve, and to ensure that those persons or entities whom a regulation will affect have a voice in its creation.

8. Certifications:

I certify that I have submitted a copy of this petition and all attachments to:

Stephen W. Mayberg, Ph.D., Director
California Department of Metal Health
1600 9th St., Suite 151
Sacramento, CA 95814
(916) 654-2413 / (916) 654-2309

I certify that all the above information is true and correct to the best of my knowledge.

/s/
MICHAEL GEORGE ST. MARTIN
PETITIONER

December 15, 2008
Date

DISAPPROVAL DECISIONS

DEPARTMENT OF JUSTICE, BUREAU OF GAMBLING CONTROL

State of California
Office of Administrative Law

In re:

Department of Justice, Bureau of
Gambling Control

Regulatory Action: Title 11
California Code of Regulations

Adopt sections: 2080, 2082, 2084, 2086, 2088, 2090,
2092, 2094, 2096, 2098, 2100, 2102,
2104, 2106, 2108, 2110, 2112, 2114,
2116

DECISION OF DISAPPROVAL OF REGULATORY ACTION

Government Code Section 11349.3

OAL File No. 2008-1120-01 S

SUMMARY OF REGULATORY ACTION

The Bureau of Gambling Control of the Department of Justice (“Bureau”) proposed regulations for the registration of fundraising events involving the use of controlled games conducted by nonprofit organizations. The regulations would implement the mandate of Business and Professions Code section 19986 which requires such registration. On November 20, 2008, the proposed regulations were submitted to the Office of Administrative Law (“OAL”) for review in accordance with the Administrative Procedure Act (“APA”) and on January 7, 2008, OAL disapproved the regulations. This Decision of Disapproval explains the reasons for OAL’s action.

DECISION

OAL disapproved the proposed regulations because the rulemaking record does not meet the necessity standard; some of the regulations are not clear; the informative digest included in the Bureau's notice of rulemaking lacks the required summary of existing law; the Bureau's new form BGC-SP 003 is incomplete; and for miscellaneous omissions and errors in the accompanying text and documentation.

Date: January 14, 2009

/s/

David D. Potter
Senior Staff Counsel

FOR: SUSAN LAPSLEY
Director

Original: Jerry Brown
Copy: Michelle Abe

VETERINARY MEDICAL BOARD

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

In re:

VETERINARY MEDICAL BOARD

REGULATORY ACTION:

Title 16, California Code of Regulations

Amend sections: 2021(g), 2068.5 and 2068.6

Repeal sections: 2067 and 2068

DECISION OF DISAPPROVAL
OF REGULATORY ACTION

(Gov. Code, sec. 11349.3)

OAL File No. 2008-1117-02 S

DECISION SUMMARY

The Veterinary Medical Board (Board) proposed to amend the California Code of Regulations, Title 16, sections 2021(g), 2068.5 and 2068.6, and to repeal sections 2067 and 2068. The regulatory action would have revised the date in the regulation indicating a change in

the publication used by the California Veterinary Medical Association to evaluate internship and residency programs for approval, established new practical experience requirements that candidates for the Registered Veterinary Technician licensing examination must meet before taking the examination, and repealed the sections containing out-of-date and unnecessary eligibility categories. The Board submitted the proposed regulatory action to the Office of Administrative Law (OAL) on November 17, 2008. On January 2, 2009, OAL notified the Board that the action was disapproved because the regulations failed to meet the clarity standard of Government Code section 11349.1.

DISCUSSION

Any regulatory action a state agency adopts through the exercise of quasi-legislative power delegated to the agency by statute is subject to the requirements of the Administrative Procedure Act (APA) unless a statute expressly exempts or excludes the act from compliance with the APA. (Gov. Code, sec. 11346.) Regulations adopted by the Board must be adopted pursuant to the APA. No exemption or exclusion applies to the regulatory action under review. Thus, before the instant regulatory action may become effective, it is subject to a review by OAL for compliance with procedural requirements and substantive standards of the APA. (Gov. Code, sec. 11349.1(a).)

Date: January 9, 2009

/s/

DEBRA M. CORNEZ
Assistant Chief Counsel
For: SUSAN LAPSLEY
Director

Original: Susan M. Geranen, Executive Officer
Copy: Linda Kassis

**SUMMARY OF REGULATORY
ACTIONS**

**REGULATIONS FILED WITH
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2008-1230-03

**BOARD OF VOCATIONAL NURSING AND
PSYCHIATRIC TECHNICIANS
Fingerprinting/Fees Regulations**

Bureau of Vocational Nursing and Psychiatric Technicians proposes emergency adoption of title 16 regulations to require submission of fingerprints and the disclosure of any convictions as a condition of license renewal or reactivation. Related licensing and renewal fees will increase to cover the staffing costs and enforcement activities associated with these requirements.

Title 16

California Code of Regulations

ADOPT: 2504.1, 2517.5, 2564.1, 2575.5 AMEND:
2537, 2540.6, 2590, 2592.6

Filed 01/09/2009

Effective 01/09/2009

Agency Contact: Sophia Cornejo (916) 575-7217

File# 2008-1201-01

**DEPARTMENT OF FOOD AND AGRICULTURE
Electric Watthour Meters**

This repeals existing regulations for watthour meters and replaces them with new regulations. Title 4, sections 4027-4027.5 are added to address applications, definitions, specifications, notes, tolerances, and user requirements for meter manufacturers, installers, users, weights and measures officials and the California Type Evaluation Program for mechanical and electronic watthour meters. This adoption also recognizes electric watthour meters that are not recognized in current regulations.

Title 4

California Code of Regulations

ADOPT: 4027, 4027.1, 4027.2, 4027.3, 4027.4,
4027.5

Filed 01/13/2009

Effective 02/12/2009

Agency Contact: Roger Macey (916) 654-0466

File# 2008-1126-02

**DEPARTMENT OF FOOD AND AGRICULTURE
Japanese Beetle Eradication Area**

This filing is a certificate of compliance for an emergency regulatory action that added the counties of Riverside and San Bernardino to the eradication area for Japanese Beetle.

Title 3

California Code of Regulations

AMEND: 3589(a)

Filed 01/12/2009

Agency Contact:

Stephen S. Brown

(916) 654-1017

File# 2008-1205-01

**DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Interior Quarantine**

This certificate of compliance for two prior emergency regulations (Files 2008-0612-02E and 2008-0602-03E) makes permanent an expansion of approximately 65 square miles of the quarantine areas in Contra Costa, Marin and Santa Clara counties, expands the Vallejo quarantine area by approximately three square miles, and expands a different quarantine area in San Mateo County by an additional 17 square miles.

Title 3

California Code of Regulations

AMEND: 3434(b)

Filed 01/13/2009

Agency Contact:

Stephen S. Brown

(916) 654-1017

File# 2009-0108-01

**DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Interior Quarantine**

The Department of Food and Agriculture is expanding two interior quarantine areas to prevent the spread of the Light Brown Apple Moth before it destroys California's wine and fruit industry. This particular rule-making merges three current quarantine areas into one giant area, and expands the quarantine area in the Pescadero area of San Mateo County.

Title 3

California Code of Regulations

AMEND: 3434(b)

Filed 01/14/2009

Effective 01/14/2009

Agency Contact:

Stephen S. Brown

(916) 654-1017

File# 2008-1126-03

**DEPARTMENT OF INDUSTRIAL RELATIONS
Workers' Compensation: Qualified Medical Evaluator**

The Division of Workers' Compensation, within the Department of Industrial Relations, proposes to amend, repeal and add to regulations in Title 8 governing the examination, appointment, reappointment and discipline of physicians who are certified as Qualified Medical Evaluators ("QME" or "QMEs"). These amendments also change the procedures to obtain QME panels (lists

of 3 QMEs). Additionally, many nonsubstantive changes are included. Among these, this rulemaking eliminates all references to the Industrial Medical Council to account for the effects of SB 228, which, among other things, repealed Labor Code section 139 (eliminating the Industrial Medical Council), and vested the authority of the Industrial Medical Council in the Administrative Director of the Division of Workers' Compensation to regulate physicians who are Qualified Medical Evaluators under Labor Code section 139.2.

Title 8

California Code of Regulations

ADOPT: 29, 31.1, 31.3, 31.7, 32.6, 36.5, 41.5, 41.6, 41.7, 63, 120, 121, 122, 123, 124 AMEND: 1, 10, 11, 11.5, 12, 13, 14, 15, 16, 17, 18, 19, 20, 30, 30.5, 31, 31.5, 32, 33, 34, 35, 35.5, 36, 38, 39, 39.5, 40, 41, 43, 44, 45, 46, 46.1, 47, 49, 49.2, 49.4, 49.6, 49.8, 49.9, 50, 51, 52, 54, 55, 56, 57, 60, 61, 62, 65, 100, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 116, 117, 118, 119, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159 REPEAL: 10.5, 32.5, 37, 53, 70, 71, 72, 73, 74, 75, 76, 76.5, 77, 101, 114, 115

Filed 01/13/2009

Effective 02/17/2009

Agency Contact:

Suzanne P. Marria (510) 286-0634

File# 2008-1202-01

DEPARTMENT OF INSURANCE

Amendments to Rules 24 and 55 of the CAARP Rules and Rates Manual

This action clarifies the proper application of penalty points under Rules 24 and 55 of the California Automobile Assigned Risk Plan Rules and Rates Manual.

Title 10

California Code of Regulations

AMEND: 2498.5

Filed 01/12/2009

Effective 02/11/2009

Agency Contact: Mike Riordan (415) 538-4226

File# 2008-1125-09

DEPARTMENT OF PARKS AND RECREATION

OHMVR Grants & Cooperative Agreements Program Regulations

This regulatory action deals with grant agreements with local and state agencies, nonprofit organizations, and educational institutions, and cooperative agreements with federal agencies and federally recognized Native American tribes by the Off-Highway Motor Vehicle Recreation (OHMVR) Division of the Department of Parks and Recreation. The regulations include

definitions, application requirements, types of projects, and specific application and content requirements for the individual projects, environmental impact reporting requirements, wildlife habitat protection program (WHPP)/habitat management program (HMP) and soil conservation requirements, match requirements, and accounting, audits and annual performance reviews. This regulatory action also incorporates by reference the 2008 Grants and Cooperative Agreements Program – Appendix, which contains all the forms necessary for completing the application requirements, and the 2008 Soil Conservation Standard and Guidelines. This regulatory action also repeals chapter 15.5, the regulations applicable to the current OHMVR grant program. This grant program has been in place for several years. The changes in this rulemaking reflect, in particular, the enactment of SB 742 (Stats. 2007, c. 541).

Title 14

California Code of Regulations

ADOPT: 4970.00, 4970.01, 4970.02, 4970.03, 4970.04, 4970.05, 4970.06.1, 4970.06.2, 4970.06.3, 4970.07, 4970.07.1, 4970.07.2, 4970.08, 4970.09, 4970.10, 4970.10.1, 4970.10.2, 4970.10.3, 4970.10.4, 4970.11, 4970.12, 4970.13, 4970.14, 4970.14.1, 4970.14.2, 4970.14.3, 4970.15, 4970.15.1, 4970.15.2, 4970.15.3, 4970.15.4, 4970.16, 4970.17, 4970.18, 4970.19, 4970.19.1, 4970.19.2, 4970.19.3, 4970.19.4, 4970.19.5, 4970.19.6, 4970.20, 4970.21, 4970.22, 4970.23, 4970.23.1, 4970.23.2, 4970.24, 4970.25.1, 4970.25.2, 4970.25.3, 4970.26 REPEAL: 4970.49, 4970.50, 4970.51, 4970.52, 4970.53, 4970.54, 4970.55, 4970.56, 4970.57, 4970.58, 4970.59, 4970.60, 4970.61, 4970.62, 4970.63, 4970.64, 4970.65, 4970.66, 4970.67, 4970.68, 4970.69, 4970.70, 4970.71, 4970.72

Filed 01/12/2009

Effective 01/12/2009

Agency Contact: Martha Ibarra (916) 324-5211

File# 2008-1222-03

DEPARTMENT OF REHABILITATION

Conflict of Interest

The Department of Rehabilitation is amending its conflict of interest code found at title 9, section 7400, California Code of Regulations. The amendments were approved for filing by the Fair Political Practices Commission on December 9, 2008.

Title 9

California Code of Regulations

AMEND: 7400

Filed 01/07/2009

Agency Contact: Joely Walker (916) 558-5825

File# 2008–1125–01

DEPARTMENT OF VETERANS AFFAIRS

Definitions of Levels of Care; California Veterans Home

This action modifies existing descriptions of levels of care provided by the Veterans Homes of California by deleting limitations on admissions of outside applicants and correcting inaccurate care descriptions.

Title 12

California Code of Regulations

AMEND: 503

Filed 01/12/2009

Effective 02/11/2009

Agency Contact: Robert D. Wilson (916) 654–7022

File# 2008–1212–02

FAIR POLITICAL PRACTICES COMMISSION

Agency Expenditures Related to a Ballot

The Fair Political Practices Commission (FPPC) is adopting section 18420.1 of title 2 of the California Code of Regulations regarding payments made by a state or local agency for communication about a ballot measure.

Title 2

California Code of Regulations

ADOPT: 18420.1

Filed 01/08/2009

Effective 02/07/2009

Agency Contact:

Virginia Latteri–Lopez (916) 324–3854

File# 2008–1212–03

FAIR POLITICAL PRACTICES COMMISSION

Gifts: Tickets or Passes to an Event

The Fair Political Practices Commission (FPPC) amends section 18944.1 and adopts section 18944.3 of title 2 of the California Code of Regulations regarding gifts.

Title 2

California Code of Regulations

ADOPT: 18944.3 AMEND: 18944.1

Filed 01/08/2009

Effective 02/07/2009

Agency Contact:

Virginia Latteri–Lopez (916) 324–3854

File# 2008–1222–02

FISH AND GAME COMMISSION

Upland Game Bird – Wild Turkey

This regulatory action adds an additional turkey hunt for junior hunters the weekend before opening day of the general turkey season. This is designed to allow

young hunters to have more success since they get to hunt before everyone else.

Title 14

California Code of Regulations

AMEND: 300

Filed 01/13/2009

Effective 01/13/2009

Agency Contact: Jon Snellstrom (916) 653–4899

File# 2008–1201–02

MANAGED RISK MEDICAL INSURANCE BOARD

MRMIP Benefit and Cost Changes

This action updates the Major Risk Medical Insurance program to coordinate with changes in laws pertaining to domestic partners and conform with Health and Safety Code section 1367.3 regarding the need to offer benefits for comprehensive preventive health care for children.

Title 10

California Code of Regulations

AMEND: 2698.100, 2698.200, 2698.201, 2698.206, 2698.300, 2698.301

Filed 01/14/2009

Effective 02/13/2009

Agency Contact: Dianne Knox (916) 324–0592

File# 2008–1226–01

SECRETARY OF STATE

Conflict of Interest Code

The Office of the Secretary of State is amending its conflict of interest code found at title 2, div. 8, ch. 24, sections 45100, 45127, and 45128, California Code of Regulations. The amendment was approved for filing by the Fair Political Practices Commission on December 9, 2008.

Title 2

California Code of Regulations

AMEND: div. 8, ch. 24, secs. 45100, 45127, 45128

Filed 01/12/2009

Effective 02/11/2009

Agency Contact: Mike Green (916) 653–6354

File# 2008–1125–06

STATE WATER RESOURCES CONTROL BOARD

Subdivision of Reach 4 of the Santa Clara River Basin Plan Amendment

State Water Resources Control Board proposes adoption of title 23, section 3939.34, to amend the Los Angeles Basin Plan by subdividing Reach 4 of the Santa Clara River into Reach 4A and Reach 4B. Subdividing Reach 4 recognizes hydrogeologic conditions that affect chloride and other water quality parameters to the upper and lower segments of Reach 4, and will allow

more localized, site-specific water quality and TMDL studies for upcoming amendments to the basin plan. The action does not modify current basin plan water quality objectives.

Title 23

California Code of Regulations

ADOPT: 3939.34

Filed 01/07/2009

Agency Contact: Nick Martorano (916) 341-5980

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN August 13, 2008 TO
January 14, 2009**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

01/12/09 AMEND: div. 8, ch. 24, secs. 45100, 45127, 45128
01/08/09 ADOPT: 18420.1
01/08/09 ADOPT: 18944.3 AMEND: 18944.1
12/30/08 AMEND: 714
12/29/08 ADOPT: 2298
12/15/08 AMEND: 17463, 17470, 17519
12/09/08 ADOPT: 25100
12/08/08 AMEND: 1700
11/03/08 AMEND: 647.1, 647.2, 647.3, 647.20, 647.20.1, 647.21, 647.22, 647.23, 647.24, 647.25, 647.26, 647.30, 647.31, 647.32, 647.33, 647.35, 647.36, 648.1, 648.3, 648.5, 649.20, 649.21
10/31/08 AMEND: 18545, 18703.4, 18730, 18940.2, 18942.1, 18943
10/31/08 ADOPT: 18402.1 AMEND: 18427
10/22/08 ADOPT: 59600
10/21/08 ADOPT: 1859.41.1, 1859.42.1 AMEND: 1859.2, 1859.41, 1859.42, 1859.43, 1859.51, 1859.147, Form SAB 50-01, Form SAB 50-03
10/20/08 ADOPT: 20120, 20121, 20122, 20123, 20124, 20125, 20126, 20127
09/04/08 ADOPT: 18530.45
09/04/08 AMEND: 18946.4
08/14/08 AMEND: 1859.2, 1859.121, 1859.122, 1859.127, 1859.129

Title 3

01/14/09 AMEND: 3434(b)
01/13/09 AMEND: 3434(b)
01/12/09 AMEND: 3589(a)
12/30/08 AMEND: 3417(b)
12/18/08 AMEND: 3417(b)
12/18/08 AMEND: 3406(b)
12/16/08 AMEND: 1358(b)
12/12/08 AMEND: 3434(b)
12/10/08 AMEND: 3589
12/04/08 AMEND: 3435(b)
11/26/08 AMEND: 3406(b)
11/20/08 ADOPT: 6400
11/12/08 AMEND: 3591.5(a)
11/12/08 AMEND: 3434(b)
11/07/08 AMEND: 3433(b)
10/30/08 ADOPT: 1430.142 AMEND: 1430.43
REPEAL: 1430.44.5
10/29/08 AMEND: 3435(b)
10/28/08 ADOPT: 3408
10/22/08 AMEND: 3700(c)
10/20/08 AMEND: 3433(b)
10/20/08 AMEND: 3434(b)
10/17/08 AMEND: 3423(b)
10/15/08 AMEND: 3433(b)
10/14/08 AMEND: 3434(b)
10/14/08 AMEND: 3423(b)
10/01/08 AMEND: 3434(b)
09/24/08 AMEND: 810.1 REPEAL: 810
09/23/08 AMEND: 3591.20(a)
09/23/08 AMEND: 3434(b)
09/18/08 AMEND: 3591.20(a)
09/17/08 AMEND: 3435(b)
09/11/08 AMEND: 3591.20(a)
09/10/08 AMEND: 3434
09/05/08 ADOPT: 3435
09/03/08 AMEND: 6452.2
09/02/08 AMEND: 3433(b)
09/02/08 AMEND: 3591.6(a)
08/26/08 AMEND: 3434(b)
08/25/08 AMEND: 3423(b)
08/18/08 AMEND: 6738, 6739
08/18/08 AMEND: 3434(b)
08/13/08 AMEND: 3434(b)

Title 4

01/13/09 ADOPT: 4027, 4027.1, 4027.2, 4027.3, 4027.4, 4027.5
12/29/08 AMEND: 12482
11/24/08 ADOPT: 8102, 8102.1, 8102.2, 8102.3, 8102.4, 8102.5, 8102.6, 8102.7, 8102.8, 8102.9, 8102.10, 8102.11, 8102.12, 8102.13, 8102.14, 8102.15 AMEND: 8090, 8091, 8092, 8093, 8094, 8095, 8096, 8097, 8098, 8099, 8100, 8101

11/17/08 AMEND: 1505
 10/30/08 AMEND: 1606
 10/16/08 ADOPT: 12047, 12048, 12050, 12348
 AMEND: 12002
 10/03/08 ADOPT: 12008 AMEND: 12122,
 12200.14, 12200.20, 12202, 12203A,
 12203.2, 12205.1, 12218.13, 12220.14,
 12220.20, 12220.20A, 12222, 12237,
 12301, 12342, 12343, 12344, 12345
 09/29/08 AMEND: 1843.2
 09/02/08 AMEND: 1850
 08/25/08 ADOPT: 8102, 8102.1, 8102.2, 8102.3,
 8102.4, 8102.5, 8102.6, 8102.7, 8102.8,
 8102.9, 8102.10, 8102.11, 8102.12,
 8102.13, 8102.14, 8102.15 AMEND:
 8090, 8091, 8092, 8093, 8094, 8095,
 8096, 8097, 8098, 8099, 8100, 8101
 08/21/08 ADOPT: 1634 AMEND: 1420

Title 5

01/05/09 AMEND: 80004
 12/09/08 ADOPT: 18131.1 AMEND: 18131
 11/06/08 AMEND: 42723
 10/17/08 ADOPT: 100000, 100001, 100002,
 100003, 100004, 100005, 100006,
 100007, 100008, 100009, 100010,
 100011, 100012, 100013, 100014,
 100015
 10/14/08 ADOPT: 42729
 09/10/08 AMEND: 41000
 09/09/08 ADOPT: 19828.3, 19837.2 AMEND:
 19816, 19816.1, 19828.2, 19837.1,
 19846

Title 8

01/13/09 ADOPT: 29, 31.1, 31.3, 31.7, 32.6, 36.5,
 41.5, 41.6, 41.7, 63, 120, 121, 122, 123,
 124 AMEND: 1, 10, 11, 11.5, 12, 13, 14,
 15, 16, 17, 18, 19, 20, 30, 30.5, 31, 31.5,
 32, 33, 34, 35, 35.5, 36, 38, 39, 39.5, 40,
 41, 43, 44, 45, 46, 46.1, 47, 49, 49.2, 49.4,
 49.6, 49.8, 49.9, 50, 51, 52, 54, 55, 56, 57,
 60, 61, 62, 65, 100, 102, 103, 104, 105,
 106, 107, 108, 109, 110, 111, 112, 113,
 116, 117, 118, 119, 150, 151, 152, 153,
 154, 155, 156, 157, 158, 159 REPEAL:
 10.5, 32.5, 37, 53, 70, 71, 72, 73, 74, 75,
 76, 76.5, 77, 101, 114, 115
 12/22/08 ADOPT: 16404, 16430, 16435.5
 AMEND: 16421, 16422, 16423, 16424,
 16425, 16426, 16427, 16428, 16429,
 16431, 16432, 16434, 16435, 16436,
 16437, 16439
 12/02/08 AMEND: 2940.6, Appendix C
 12/01/08 AMEND: 5198(f)(2)(A)
 11/19/08 AMEND: 1658(p)

11/17/08 ADOPT: 10116, 10116.1, 10116.2,
 10116.3, 10116.5, 10116.6, 10116.7,
 10116.8 AMEND: 10123.1 renumbered
 to 10116.4, 10001 renumbered to
 10116.9, 10002 renumbered to 10117,
 10003 renumbered to 10118, 10004
 renumbered to 10119, 10005 renumbered
 to 10120, 10123, 10127, 10127.1, 10128,
 10133.13, 10133.14, 10133.16,
 10133.22, 10133.53, 10133.54,
 10133.55, 10133.56, 10133.57, 10133.58
 REPEAL: 10133.3, 10133.50
 11/17/08 ADOPT: 10210, 10211, 10212, 10213,
 10214, 10215, 10216, 10217, 10218,
 10222, 10223, 10225, 10227, 10228,
 10229, 10230, 10232, 10232.1, 10232.2,
 10233, 10236, 10240, 10241, 10243,
 10244, 10245, 10246, 10250, 10250.1,
 10251, 10253, 10253.1, 10254, 10256,
 10260, 10270, 10271, 10272, 10273,
 10275, 10280, 10281, 10290, 10291,
 10293, 10294, 10294.5, 10295, 10296,
 10297 AMEND: 10252, 10252.1
 REPEAL: 10250
 11/17/08 ADOPT: 10150.1, 10150.2, 10150.3,
 10150.4, 10151, 10151.1, 10166.1
 AMEND: 10150, 10160, 10160.1,
 10160.5, 10161, 10161.1, 10162, 10164,
 10165, 10166, 10167 REPEAL: 10168
 11/17/08 ADOPT: 10397, 10403, 10409, 10508,
 10550, 10593, 10603, 10629, 10770.5,
 10770.6, 10782, 10785, 10844, 10845
 AMEND: 10301, 10302, 10324, 10346,
 10400, 10410, 10411, 10412, 10450,
 10500, 10505, 10507, 10510, 10541,
 10561, 10589, 10608, 10616, 10626,
 10750, 10751, 10753, 10754, 10755,
 10770, 10779, 10840, 10842, 10843,
 10846, 10848, 10850, 10860, 10865,
 10866, 10946, 10950, 10953 REPEAL:
 10306, 10308, 10347, 10390, 10391,
 10392, 10395, 10396, 10414, 10415,
 10416, 10417, 10514, 10520, 10548,
 10555, 10563, 10590, 10591, 10592,
 10610, 10630, 10758, 10762, 10771,
 10867, 10890, 10952, 10955, 10957,
 10995, 10996
 11/12/08 AMEND: 15600, 15601, 15602, 15603,
 15604, 15605, 15606, 15607, 15611
 11/06/08 AMEND: 2540.8, 2540.9, 2548.23,
 2719, 2740, 2741, 2880, 2980
 10/01/08 AMEND: 3412, 3413, 3414, 3416
 09/23/08 AMEND: 5155
 09/22/08 ADOPT: 1530.1

09/17/08	AMEND: 1512	10/02/08	AMEND: 423.00
08/26/08	AMEND: 5168, 6775	10/02/08	AMEND: 15.00, 15.03
08/25/08	ADOPT: 9721.11, 9721.12, 9721.13, 9721.14, 9721.21, 9721.33 AMEND: 9720.1, 9720.2, 9721.1, 9721.2, 9721.31, 9721.32, 9722, 9722.1, 9722.2, 9723	09/08/08	AMEND: 2449
Title 9		08/29/08	ADOPT: 2660(a)(0.5), 2260(a)(0.7), 2260(a)(6.9), 2260(a)(7.5), 2260(a)(8.5), 2260(a)(10.5), 2260(a)(10.7), 2260(a)(19.7), 2260(a)(19.8), 2260(a)(23.5), 2260(a)(23.7), 2260(a)(37), 2260(a)(38), 2260(a)(39), 2262.3(d), 2264.2(a)(3), 2264.2(b)(5), 2264.2(d), 2265(c)(4), 2265.1, 2265.5, 2266(b)(3), 2266(b)(4), 2266(b)(5) AMEND: 2261, 2262, 2262.3, 2262.4, 2262.5, 2262.9, 2263, 2263.7, 2264.2, 2265, 2266, 2266.5, 2270, 2271, 2273
01/07/09	AMEND: 7400	08/13/08	ADOPT: 619.2 AMEND: 615, 615.1, 616, 617, 618, 619, 619.1
11/18/08	ADOPT: 9550	Title 13, 17	
Title 10		12/03/08	AMEND: 2299.3, 93118.3
01/14/09	AMEND: 2698.100, 2698.200, 2698.201, 2698.206, 2698.300, 2698.301	10/20/08	ADOPT: 2299.5, 93118.5
01/12/09	AMEND: 2498.5	Title 14	
12/31/08	ADOPT: 2194.50, 2194.51, 2194.52, 2194.53, 2194.54, 2194.55	01/13/09	AMEND: 300
12/02/08	AMEND: 2652.1	01/12/09	ADOPT: 4970.00, 4970.01, 4970.02, 4970.03, 4970.04, 4970.05, 4970.06.1, 4970.06.2, 4970.06.3, 4970.07, 4970.07.1, 4970.07.2, 4970.08, 4970.09, 4970.10, 4970.10.1, 4970.10.2, 4970.10.3, 4970.10.4, 4970.11, 4970.12, 4970.13, 4970.14, 4970.14.1, 4970.14.2, 4970.14.3, 4970.15, 4970.15.1, 4970.15.2, 4970.15.3, 4970.15.4, 4970.16, 4970.17, 4970.18, 4970.19, 4970.19.1, 4970.19.2, 4970.19.3, 4970.19.4, 4970.19.5, 4970.19.6, 4970.20, 4970.21, 4970.22, 4970.23, 4970.23.1, 4970.23.2, 4970.24, 4970.25.1, 4970.25.2, 4970.25.3, 4970.26 REPEAL: 4970.49, 4970.50, 4970.51, 4970.52, 4970.53, 4970.54, 4970.55, 4970.56, 4970.57, 4970.58, 4970.59, 4970.60, 4970.61, 4970.62, 4970.63, 4970.64, 4970.65, 4970.66, 4970.67, 4970.68, 4970.69, 4970.70, 4970.71, 4970.72
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